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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,059	07/18/2003	James Traut	515858-2007	2281
20999	7590	11/10/2005	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			SANTOS, ROBERT G	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/622,059

Applicant(s)

TRAUT ET AL.

Examiner

Robert G. Santos

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 17-32 and 34-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 7, 8, 11, 12, 14, 15 and 33 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Prolo '923 (note especially Figures 1-3; column 2, lines 55-58; column 3, lines 6-36 & 40-67; and column 4, lines 8-35).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prolo '923 in view of Zolecki '757. Prolo '923 discloses the use of body part contact means (18, 21a-21c, 23) and strap fastening means in the form of cleats (23) as opposed to comprising a hook and loop fabric type-style fastener as claimed. Zolecki '757 provides the basic teaching of a body part immobilization apparatus (20) comprising a body part contact means and strap fastening means in the form of a hook and loop fabric type-style fastener (52). The skilled

Art Unit: 3673

artisan would have found it obvious at the time the invention was made to replace the cleats of Prolo '923 with a body part contact means and strap fastening means in the form of a hook and loop fabric type-style fastener in order to provide a simple alternative means for readily attaching and adjusting the restraining strap relative to the one or more side blocks as desired.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prolo '923 in view of Durham '766. Prolo '923 does not specifically disclose a condition wherein the body part contact means (18c, 21a-2c, 23) is of a color which is dissimilar to the color of the side block (18) to which the body part contact means is removably attached. Durham '766 provides the basic teaching of a body part immobilization apparatus (10) comprising body part contact means (42, 46) which are "preferably of a light color...[or] any color other than the color red which is so closely associated with the color of blood" (see Durham '766, column 4, lines 8-11 & 16-19). The skilled artisan would have found it obvious at the time the invention was made to provide the body part immobilization apparatus of Prolo '923 with body part contact means having a color which is dissimilar to the color of the side block to which the body part contact means is removably attached "so that the attending physician or emergency personnel can easily make a visual determination of the existence or presence of blood and the points adjacent to the patient's head from which the blood might be seeping or be flowing" (see Durham '766, column 4, lines 19-23).

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prolo '923 in view of Garth et al. '185. Prolo '923 does not specifically disclose a condition wherein the body part

Art Unit: 3673

contact means (18c) is removably attached to the corresponding side block (18) by means of a two-sided adhesive fastener. Garth et al. '185 provide the basic teaching of a body part immobilization apparatus comprising body part contact means (1) removably attached to a supporting surface through the use of a two-sided adhesive fastener (30). The skilled artisan would have found it obvious at the time the invention was made to provide the body part immobilization apparatus of Prolo '923 with a two-sided adhesive fastener for removably attaching the body part contact means to the corresponding side block in order to provide a simple conventional fastening means for readily attaching the body part contact means to the corresponding side block as desired.

7. Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prolo '923 in view of McReynolds '262. Prolo '923 do not specifically disclose conditions wherein the strap fastening means (23) is rotatable, and wherein the body part contact means (21a-21c) are removably attached to the corresponding side block (18) by extending fastening means through corresponding openings in the body part contact means to engage the corresponding side block. McReynolds '262 provides the basic teaching of a body part immobilization apparatus comprising body part contact means (23, 24) which are removably attached to corresponding side support sections (as shown in Figure 1) through rotatable fastening means (also as shown in Figure 1 and as described in column 3, lines 6-12) extending through corresponding openings in the body part contact means to engage the corresponding side section. The skilled artisan would have found it obvious at the time the invention was made to provide the body part immobilization apparatus of Prolo '923 with rotatable strap fastening means and body part

Art Unit: 3673

contact means removably attached to the corresponding side block by extending fastening means through corresponding openings in the body part contact means to engage the corresponding side block in order to provide yet another simple alternative means for readily attaching and adjusting the restraining strap relative to the one or more side blocks as desired.

### *Response to Amendment*

In response to Applicants' arguments on page 13 of their amendment concerning the Prolo '923 reference, the examiner respectfully maintains that Prolo '923 discloses the use of a base for mounting the one or more side blocks as broadly recited in Applicants' claims. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). Furthermore, in response to Applicants' argument that Prolo '923 does not include certain features of Applicants' invention, the limitations on which the Applicants rely (i.e., a base that attaches to a board) are not stated in the claims. It is the claims that define the claimed invention, and it is claims, not specifications, that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064.

Lastly, Applicants' arguments found on pages 13 and 14 of the amendment concerning the Zolecki '757, Durham '766, Garth et al. '185 and McReynolds '262 patents are of no consequent as these arguments attack the references individually. Where the rejection is a combination of references, Applicant(s) cannot show unobviousness by so attacking the references. *In re Young et al.*, 56 CCPA 757, 403 F.2d 754, 159 USPQ 725.

*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tomcany et al. '068, Tomcany et al. '313, Hubert et al. '951 and Newkirk et al. '987.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Robert G. Santos  
Primary Examiner  
Art Unit 3673

R.S.  
November 8, 2005